

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/115,589	07/15/98	VAN EYK	J 12917

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CANADA

HM12/0119

EXAMINER

GUCKER, S

ART UNIT	PAPER NUMBER
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1647

12

DATE MAILED:

01/19/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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## Office Action Summary

Application No.	09/115,589	Applicant(s)	Van Eijk et al.
Examiner	Stephen Gucker	Group Art Unit	1647

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- Responsive to communication(s) filed on 10/13/00.
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- Claim(s) 1-52 is/are pending in the application.
- Of the above claim(s) 29-52 is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- Claim(s) 1-4 & 6-28 is/are rejected.
- Claim(s) 5 is/are objected to.
- Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). 4  Interview Summary, PTO-413
- Notice of References Cited, PTO-892  Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

## Office Action Summary

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Art Unit: 1647

### **DETAILED ACTION**

1. The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1647.
2. Applicant's election with traverse of Group I, claims 1-28, in Paper No. 6, filed 3/10/00 is acknowledged. The traversal is on the ground(s) that the method of Group I cannot be practiced without the kit of Group II and that Groups I and IV are intimately linked and no additional search burden would exist. This is not found persuasive because the kit carries no patentable weight over the compound which the kit is comprised of, and the compound can be used other to assay for muscle damage, such as its ability to bind myofilament proteins in order to purify or isolate them. Further, Group IV encompasses specific methods and procedures which differ from and are additional to the invention of Group I as admitted to by Applicant where Applicant notes that additional steps are required for profile characterization, and these additional steps distinguish the inventions and create a search burden.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 29-52 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.
4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 6-24, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Wicks et al. (WO 94/27156, "Wicks"). Wicks discloses the use of antibodies and detectable labels and markers (enzymes, alkaline phosphatase, page 12) to detect troponin I (and specific fragments claimed, page 5 and claims 12-13, 18, 26-27, 32-34, and 36) and troponin C in a complex in sandwich assays having immobilized solid phases for the purpose of assaying irreversible cardiac damage from biological samples such as blood (pages 2-5).
6. Claims 1-2, 8-21, and 25-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Takahashi et al. (WO 96/10078, "Takahashi"). Takahashi discloses the use of antibodies and detectable labels and markers (enzymes, peroxidase and alkaline phosphatase, pages 6-7 and 9) to detect myosin light chain 1 (MLC-1) in a complex in sandwich assays having immobilized solid phases (pages 10 and 12) for the purpose of assaying irreversible cardiac damage from biological samples such as blood (pages 2-5).
7. Claim 5 is objected to as being dependent on a rejected claim.
8. No claim is allowed.
9. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gucker whose telephone number is (703) 308-6571. The examiner can normally be reached on Monday to Friday from 0830 to 1700. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on (703) 308-4623. The fax phone number for this Group is currently (703) 308-4242, but Applicant should confirm this by phoning the Examiner before faxing.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

*SG*

Stephen Gucker

January 16, 2001

*Gary L. Kunz*  
GARY L. KUNZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600